HIGH COURT OF UTTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 571 of 2001
{Old No.5373 of 1996}

Shri Krishna Singh
S/o Sri Randhir Singh
Present posted as Executive Officer
Nagar Palika, Hamirpur
District Hamirpur .....Applicant

Versus

1. State of Uttaranchal
2. Chief Judicial Magistrate .....Respondents

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Sarvesh Agarwal learned counsel for the applicant and Sri G. S. Sandhu learned A.G.A. for he State.

2. This petition has been filed for quashing the entire proceedings of criminal case No.653/1995 State Vs. Sayeed & others under section 409 I.P.C. pending before the Chief Judicial Magistrate, Nainital.

3. Brief facts of the case are that the applicant was an Executive Officer, Nagar Palika, Hamirpur, and District Hamirpur. He was appointed as Enquiry Officer with regard to the embezzlement of the money, which was provided under the scheme of Nehru Rozgar Yojna in Nagar Palika. After completing the inquiry, the applicant has submitted his report to the Sub-Divisional Officer, Khatima and the same was referred to the Addl. District Magistrate (Planning), Nainital. The applicant could not furnish the detailed accounts of money, which was provided to the Nagar Palika. Thereafter, an FIR was lodged against the applicant at the behest of Addl. District Magistrate (Planning) under section 409 I.P.C. The case was investigated by the police and it was found

that there is a prima facie case against the accused and the chargesheet was submitted against the applicant. Thereafter, the Magistrate took cognizance against the applicant under section 409 I.P.C. Feeling aggrieved by this, the present petition has been filed.

4. The learned counsel for the applicant contended that the applicant was appointed as an Inquiry Officer and he submitted the report to the S.D.M. that the verification of the work done is to be made. The learned A.G.A. refuted the contention. It is an admitted fact that the report was called for from the Executive Officer (applicant) with regard to the detailed accounts of money. It is also on record that inspite of reminders the applicant did not furnish the detailed account of the money, which was provided under the scheme of Nehru Rozgar Yojna to the Nagar Palika. The applicant being a head of the department was under obligation to furnish the account of the S.D.M. It can only be in the notice of the applicant that how much amount was utilized. The applicant has refrained to submit the correct accounts.

5. The learned counsel for the applicant contended that the entire amount has been properly utilized and he could not only furnish the said account. The learned A.G.A. refuted the contention and contended that if the said amount has been properly utilized, the applicant could have furnished the details of accounts. In absence of furnishing the correct account either to the State or to I.O., the prosecution has submitted the chargesheet against the applicant under section 409 I.P.C. It was the omission on the part of the applicant. On the other hand, the applicant is contending that there is no liability on the part of the applicant and the money has been

appropriated in the good manner. This is disputed fact and this Court cannot decide or evaluate the disputed fact. The High Court under section 482 Cr.P.C. should not interfere with the order of the trial court unless there are strong reasons to hold that in the interest of justice and to avoid abuse of process of the court the cognizance against the accused needs to be quashed.

6. The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made by the witnesses that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

7. It has been held in **M. Narayandas Vs. Sate of Karnatak 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be

exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

8. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and other SCC (Cri) 2004 p/353}.**

9. No other grounds have been raised by the learned counsel for the applicant.

10. In view of the aforesaid decisions, the petition is devoid of merit. Therefore, the petition is dismissed.

(J. C. S. Rawat, J.)

Dated 23.08.2005

LSR